



# City of Seattle

Seattle Police Department

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June 7, 2013

Phil Mocek  
MuckRock News  
Dept MR 4902  
PO Box 55819  
Boston, MA 02205-5819

RE: Public Disclosure Appeal PDR #2013-1125

Mr. Mocek,

The Seattle Police Department (SPD) Legal Unit has received your appeal of the SPD Public Disclosure Unit's (PDU) response to your public disclosure request dated April 9, 2013 for an: index of records contained in the police investigation file for the March 22, 2013, incident during which members of the Bellevue Police Department SWAT unit Casey Hiam, Jacob Bement, and Jacob Childers 'executed' a man at approximately 5:00 am near South Hudson Street and 42<sup>nd</sup> Avenue South in the Columbia City neighborhood of Seattle, Washington (incident number 13-96094).

The PDU responded to your above noted request by notifying you that SPD would not be able to release the record to you at that time, as the case was under active investigation and non-disclosure was essential to effective law enforcement, citing RCW 42.56.240(1) as well as *Newman v. King County* and *Cowles Publishing Co. v. Spokane Police Department*. PDU also invited you to submit your request in 6-8 weeks for those records. I have attached that response for your reference.

In addition, SPD PDU Manager Sheila Friend Gray responded to your April 17, 2013 correspondence regarding this request, received by SPD after the attached PDU reply was sent to you, in which you requested the index again and stated you did not know what the "contents of an investigation" means. Ms. Friend Gray then provided you with a further explanation of the application of the open and active investigation categorical exemption to your request.

The Legal Unit has researched your request for the index of the above mentioned investigation and the investigation remains open and active, therefore the responses of the SPD PDU (noted above) are upheld. The records you have requested are not available to you at this time for the reasons previously stated to you by PDU and noted herein. The Department invites you to submit a request for those records in 2 to 3 weeks.

As a courtesy, I have included greater detail of the applicable categorical exemption below, for your reference:

The records of an open, active police investigation are exempt from disclosure pursuant to RCW 42.56.240(1), commonly known as the "effective law enforcement" exemption. The Washington Supreme Court interpreted the effective law enforcement exemption as it applies to ongoing police investigations in *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997). The

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*Newman* Court held that open and active police investigation files are categorically exempt from disclosure under the PRA because nondisclosure is essential to effective law enforcement. In establishing the categorical exemption, the Court recognized that during an ongoing investigation it is not possible to determine what records are sensitive and therefore the "exemption allows the law enforcement agency, not the courts, to determine what information, if any, is essential to solve a case." 133 Wn.2d at 574-75. The *Newman* Court held that a law enforcement agency "has no duty to disclose any information contained in an open investigation file because the [records] are exempt under [what is now RCW42.56.240(1) ]." 133 Wn.2d at 575 (emphasis added).

Law enforcement agencies may withhold the entire contents of an open, active investigation because premature release of the records could jeopardize the investigation and ultimate prosecution of a crime by revealing sensitive information critical to solving the crime. When the categorical exemption expressed in *Newman* applies to an open, active investigation, the agency complies with its obligation to provide a valid claim of exemption under RCW 42.56.210(3) without creating an exemption log or providing specific detailed information about the records contained in the investigative file, such as an index of the contents of the file.

This correspondence closes your public disclosure appeal with SPD.

Sincerely,

Jim Pugel  
Chief of Police



Shawna Skjonsberg-Fotopoulos  
Legal Advisor

Enclosure

## Stephenson, Rodger

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**From:** Stephenson, Rodger on behalf of SPD-PDR, SPD  
**Sent:** Wednesday, April 17, 2013 1:48 PM  
**To:** '4902-92789494@requests.muckrock.com'  
**Subject:** RE: Might Be Spam -Freedom of Information Request: Bellevue PD SWAT shooting 2013-03-22: investigative file index (SPD)

RE: Public Disclosure Request # P2013-1125

Dear Mr. Phil Mocek,

This letter is in response to your public disclosure request dated April 9, 2013 and received by Seattle Police Department on April 9, 2013 for index of records contained in the police investigation file for the March 22, 2013 incident during which members of the Bellevue Police Department SWAT unit: Casey Hiam, Jacob Bement, and Jacob Childers "executed" a man at approximately 5:00 am near South Hudson St and 42nd Ave S in the Columbia City neighborhood of Seattle, Washington (incident number 13-96094). We will not be able to release information to you at this time. This case is under active investigation non-disclosure is essential to effective law enforcement. (RCW 42.56.240(1).) Explanation: The contents of an active investigation are categorically exempt in their entirety. See *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997) and *Cowles Publishing Co. v. Spokane Police Department*, 139 Wn.2d 472 987 P.2d 620 (1999).

We invite you to submit your request in 6-8 weeks for these records.

If you feel that this information has been withheld in error, you may file a written appeal of this response with the Chief of Police within ten (10) business days from the date of this letter. Please include your name and address and a copy of this letter together with a brief statement identifying the basis of the appeal. Please mail or deliver your appeal to:

Chief of Police  
Seattle Police Department  
PO Box 34986  
Seattle, WA 98124-4986

This concludes the Seattle Police Department's response to your request.

If you have any questions, please contact the Public Disclosure Desk at 206-684-5481.

Sincerely,

John Diaz  
Chief of Police

Rodger Stephenson  
Administrative Specialist II  
Public Disclosure Unit

JD:rs

-----Original Message-----